

IN THE FIGURES

Applicants have attached hereto a replacement Figure 1. Replacement Figure 1 is labeled "Prior Art".

REMARKS

In the outstanding Official Action, the previous Restriction Requirement and contingent Election of Species Requirement were each made final. Accordingly, claims 5-20 are withdrawn from consideration, and claims 1-4 and 21 are pending. Figure 1 was objected-to under MPEP 608.02(g) as lacking a legend such as –Prior Art--. Claims 1-3 and 21 were rejected under 35 U.S.C. §103(a) over SHARMA et al. (U.S. Patent No. 6,816,248). Claim 4 was rejected under 35 U.S.C. §103(a) over SHARMA in view of YAGER (U.S. Patent No. 7,030,989).

Initially, Applicants again traverse the previous Election of Species requirement. The outstanding Official Action asserts that the identified Species (i.e., as identified by the Examiner) require "different search" though they are classified in the same subclass. However, this assertion is speculative and unsupportable without an actual search being performed for the features recited in the withdrawn claims. In any case, such a speculative burden is not believed to be a proper basis for requiring Election, particularly where each of the identified Species (as identified by the Examiner) has been classified in the same class and subclass.

Further, as explained previously, the characteristics of the various identified Species I, Species II and Species III (as identified by the Examiner) are characteristics attributable to a single exemplary embodiment illustrated at least in FIG. 3, such that the very characterization of these features as belonging solely to the different identified Species (as identified by the Examiner) is incorrect. Thus, the identification of Species is not based on a proper identification of different Species in the specification and Figures. Rather, the identification of Species is based on the various recitations of claims 1-17 and 21, and not on any identifiable Species as set forth in the specification and Figures. As previously explained, the Species of Figure 3 (as identified by the Examiner) discloses each of the features identified by the Examiner as

belonging to different, mutually exclusive, Species. Thus, the identification of Species by the Examiner is incorrect, and the basis for the Election of Species is unsupported by the MPEP. Accordingly, Applicants respectfully request reconsideration and withdrawal of the Election of Species requirement, and rejoinder and consideration of each of withdrawn claims 5-17.

Applicants also note that Figure 1 has been replaced with replacement Figure 1, labeled as "Prior Art". Accordingly, Applicants respectfully request reconsideration and withdrawal of the outstanding objection to the drawings.

Furthermore, with respect to the rejection of claim 4, Applicants note that YAGER was filed on October 28, 2003, i.e., the same day as the present application. YAGER claims priority to U.S. Provisional Patent Application No. 60/142,917 (filed October 28, 2002), while the present application claims priority based upon Japanese Patent Application No. 2002-315814 (filed October 30, 2002). Nevertheless, YAGER may only be considered "prior art" to the present application insofar as the relied-upon teachings of YAGER are disclosed in U.S. Provisional Patent Application No. 60/142,917. Accordingly, if the rejection of claim 4 is maintained, Applicants respectfully request that the Examiner identify with specificity where in U.S. Provisional Patent Application No. 60/142,917 the Examiner believes the cited teachings of YAGER are disclosed.

In any case, Applicants submit that claim 4 is allowable, as explained below, at least insofar as independent claims 1 and 21 are rejected solely over SHARMA, and the combinations recited in independent claims 1 and 21 are not disclosed, suggested or rendered obvious by SHARMA.

With respect to the rejection of claim 1 over SHARMA, the Official Action asserts that it would have been obvious to modify Figure 3 of SHARMA to attach the light source to the

entrance face and the photoelectric sensor to the exit face of the prism. Figure 3 of SHARMA shows the sensor 22 as detached from the exit face of the prism and the light source 32 as detached from the entrance face of the prism. Contrary to the assertion in the Official Action, there would be motivation not to modify SHARMA in the manner asserted. For example, the required modifications to SHARMA would require removal of the first lens 38 and the second lens 40 which stand between the respective faces and the light source 32 and the sensor 22. The required modifications would also render moot the purpose of mirror 42 in SHARMA. Furthermore, the required modifications to SHARMA would render moot the intention to place the sensor 22 detached from the exit face of the prism and to place the light source 32 detached from the entrance face of the prism. Accordingly, modification of Figure 3 in SHARMA in the manner asserted in the Official Action would render moot numerous of the teachings in SHARMA.

At least for each and all of the reasons set forth above, independent claim 1 is allowable over SHARMA. In this regard, if the rejection of claim 1 over SHARMA is maintained, the Examiner is requested to provide citation to any proper secondary reference which discloses the features of claim 1 which are acknowledged to be absent in SHARMA, as well as an explanation of a proper motivation to modify SHARMA with the teachings of any such secondary reference such that the combination of features recited in claim 1 would be rendered obvious.

Independent claim 21 is allowable over SHARMA for reasons similar to those set forth above with respect to claim 1. Further, dependent claims 2-4 are allowable at least for depending, directly or indirectly, from an allowable independent claim 1 as well as for additional reasons related to their own recitations.

As set forth above, the previous Election of Species requirement is improper, and claims 1-17 and 21 should be examined together. Further, the objection to Figure 1 should be withdrawn at least in view of the attached replacement Figure 1, labeled as "Prior Art".

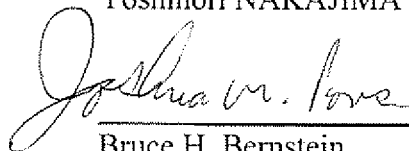
Additionally, SHARMA does not disclose, suggest or render obvious the combinations recited in claim 1 and 21, for at least the reasons set forth above. In other words, there is no proper motivation, and no proper secondary teachings, for the modifications to SHARMA acknowledged in the Official Action to be necessary. Further, the proposed modifications would render moot numerous of the teachings in SHARMA. Accordingly, claims 1 and 21 are allowable over SHARMA. Finally, claims 2-4 are allowable at least for depending from an allowable independent claim 1, as well as for additional reasons related to their own recitations.

SUMMARY AND CONCLUSION

Applicants have made a sincere effort to place the present application in condition for allowance and believe that they have now done so. Applicants have pointed to features of the claims that are not disclosed, suggested or rendered obvious by the documents applied in the Official Action. Accordingly, Applicants respectfully submit that a clear basis for the patentability of claims 1-4 and 21 has been established, and an indication to that effect is respectfully requested.

Should the Examiner have any questions, any representative of the U.S. Patent and Trademark Office is invited to contact the undersigned at the below-listed telephone number.

Respectfully Submitted,
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